



**MEETING OF THE
MUNICIPAL PLANNING TRIBUNAL
(MPT)**

MINUTES

DATE:	31 AUGUST 2023
VENUE:	TOWN PLANNING COMMITTEE ROOM
TIME:	10:00

OVERSTRAND

MUNICIPAL PLANNING TRIBUNAL

MINUTES OF A MEETING OF THE MUNICIPAL PLANNING TRIBUNAL, HELD IN THE TOWN PLANNING COMMITTEE ROOM ON 31 AUGUST 2023 AT 10:00

PRESENT:

MEMBERS:

Ms H Janser, Directorate Development
Management
Mr S Müller, Director : Infrastructure & Planning
Mr H Blignaut, Deputy Director : Engineering
Services
Ms R Louw, Senior Manager : Strategic Services

OFFICIALS:

Mr R Kuchar, Senior Manager : Town & Spatial
Planning
Mr H Olivier, Town Planner
Mr P Roux, Town Planner

APOLOGIES:

Mr S Madikane, Director : LED
Ms S Swart, Council Support Services

MUNICIPALITY



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**SPECIAL
MUNICIPAL PLANNING TRIBUNAL**

ATTENDANCE REGISTER

Date: 31 AUGUST 2023

I, the undersigned, hereby declare:

- that I will make known details of any personal or other interest in respect of matters on the agenda and whether I have been approached by any party prior to the meeting
- that I have read all the information on the agenda

NAME	DEPARTMENT / SECTION MUNICIPALITY	SIGNATURE
H JANSER	CHAIRPERSON DIR: DEV MANAGEMENT	
S MOLLER	VICE-CHAIRPERSON OVERSTRAND MUNICIPALITY	
S MADIKANE	MPT MEMBER OVERSTRAND MUNICIPALITY	Apology
H BLIGNAUT	MPT MEMBER OVERSTRAND MUNICIPALITY	
R LOUW	MPT MEMBER OVERSTRAND MUNICIPALITY	
R KUCHAR	AUTHORISED OFFICIAL OVERSTRAND MUNICIPALITY	
S VAN DER MERWE	SENIOR TOWN PLANNER OVERSTRAND MUNICIPALITY	
H VAN DER STOEP	SENIOR TOWN PLANNER OVERSTRAND MUNICIPALITY	
P ROUX	TOWN PLANNER OVERSTRAND MUNICIPALITY	
H OLIVIER	TOWN PLANNER OVERSTRAND MUNICIPALITY	
B MINNAAR	TOWN PLANNER OVERSTRAND MUNICIPALITY	
S SWART	COUNCIL SUPPORT OVERSTRAND MUNICIPALITY	Apology

1. OPENING

The Chairperson, Ms H Janser, opened the meeting and welcomed those present.

2. APPLICATIONS FOR LEAVE OF ABSENCE

Dir S Madikane
Ms S Swart

RESOLVED:

that the above-mentioned applications for leave of absence **be granted**.

3. CONFIRMATION OF MINUTES**3.1 Minutes of a Municipal Planning Tribunal Meeting held on 27 July 2023****RESOLVED:**

that the Minutes of the Municipal Planning Tribunal Meeting held on **27 July 2023, be approved**.

3.2 Minutes of a Special Municipal Planning Tribunal Meeting of 24 August 2023**RESOLVED:**

that the Minutes of the Special Municipal Planning Tribunal Meeting held on **24 August 2023 be approved**.

4.1

ERF 3221, 16 LAGOON DRIVE, ONRUS RIVER: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITION, DEPARTURE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: INTERACTIVE TOWN & REGIONAL PLANNING ON BEHALF OF PH VAN NIEKERK

3221 HON (4299/2022)

H Olivier

(028) 313 8900

Hermanus Administration

11 July 2023

EXECUTIVE SUMMARY

An application was received on 29 November 2022 from Interactive Town & Regional Planners on behalf of PH Van Niekerk on Erf 3221, Onrustrivier in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the following:

- ❖ **Removal of Restrictive Title Deed Conditions** in terms of Section 16.(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the removal of restrictive title deed condition E.7 as contained in Title Deed T3925/2014 of the property, to accommodate the existing dwelling and structures.

The restrictive title conditions read as follows:

“E. ONDERHEWIG VERDER aan die volgende voorwaardes opgele deur die Administrateur in terme van Ordonnansie Nr 33/1934 met die goedkeuring van die stigting van Onrust Rivier Dorp Uitbreiding Nr 3 en vervat in gesegde Transportakte Nr T29867/80, naamlik:

7. *NO building or structure or any portion thereof except boundary walls and fences, shall except with the consent of the Administrator, be erected nearer than 5m to the street line which forms a boundary of this erf, nor within 3m of the rear or 1,5m of the lateral boundary common to any adjoining erf, provided that with the consent of the local authority –*
 - (i) *an outbuilding used solely for the housing of motor vehicles and not exceeding 3m in height measured from the ground floor of the outbuilding to the wall plate height thereof, may be erected within such side and rear spaces, and any other outbuilding of the same height may be erected within the rear space and side space for distance of 12m measured from the rear boundary of the erf, provided that in the case of a corner erf the distance of 12m shall be measured from the point furthest from the streets abutting the erf;*

(ii) an outbuilding in terms of subparagraph (i) may only be erected nearer to a lateral or rear boundary of a site than the above prescribed spaces, if no windows or doors are inserted in any wall facing such boundary.”

- ❖ **Departure** in terms of Section 16(2)(b) of the By-Law to relax the northern lateral building line from 2m to 1,3m to accommodate the existing dwelling on the property.
- ❖ **Determination of an Administrative penalty** application in terms of Section 16.(2)(q) of the By-Law for the unauthorized building line encroachments as stipulated above.

RESOLVED:

1. that the application in terms of Section 16.(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 3221, Onrustrivier for the removal of restrictive title deed condition E.7 as contained in Title Deed T3925/2014 of the property to accommodate the existing dwelling and structures (low wooden deck), **be approved**, in terms of the provisions of Section 61 of the By-Law;
2. that the application in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 3221, Onrustrivier for a departure to relax the northern lateral building line from 2m to 1,3m to accommodate the existing dwelling on the property, **be approved**, in terms of the provisions of Section 61 of the By-Law;
3. that the approvals in Points 1 and 2 above be subject to the following conditions:
 - (a) that this approval is only for the removal of a title deed restriction and a building line departure and is not an approval in terms of any other legislation;
 - (b) that the approval be limited to the building/structures as per Plan number PvN Onrus-001 dated April 2013 and the encroachments as indicated on the site plan as shown in the motivation report under paragraph 1(c) (marked as Figure 1);
 - (c) that the applicant constructs a 2,1m high (measured from natural ground level) wall/non-transparent screen south of the existing wooden deck, and any gates in such wall/screen must also be 2,1m in height and non-transparent, to the satisfaction of the Senior Manager: Town & Spatial Planning;

- (d) that building plans in line with condition 1(b) above be submitted to the Building Control Department for approval, and that all conditions of the Building Control and the Fire Departments be complied with at that stage;
 - (e) that this approval does not absolve the applicant from compliance with any other relevant legislation;
 - (f) that all other development parameters as prescribed in the relevant Land Use Scheme be complied with;
 - (g) that all the conditions in the Services Report be complied with;
 - (h) that the conditions imposed by Telkom be complied with;
 - (i) that the conditions of Eskom be complied with; and
 - (j) that the conditions of BGCMA be complied with.
4. that the application for determination of an administrative penalty in terms of Section 90.(4) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 applicable to Erf 3221, Onrustvrievier, for the unauthorized structures / buildings over building lines as stipulated above, **was considered**, and that an administrative penalty fee of R4784.39 (VAT incl.) be payable within thirty (30) days of the decision; and
5. that the applicant and objector be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2020 regarding the above decision.

REASONS FOR THE RESOLUTION:**POINTS 1 & 2**

- ❖ The portions of the existing dwelling constructed over building lines are historic encroachments that the applicant was unaware of and only became aware of when the property was formally surveyed. The impact of these encroachments is marginal.
- ❖ The enclosure of the covered balcony over the Title Deed street building line is a minor encroachment and remains within an existing building footprint. This will have no impact on the street ambience or privacy of neighbours.
- ❖ The low deck was constructed over the 3m rear Title Deed building line. The request that the deck be removed is unreasonable and the impact thereof on the neighbours can be mitigated by the proposed screen.
- ❖ The application is supported by all relevant Municipal Departments and Organs of State and other institutions.
- ❖ No Municipal services are affected.

POINT 4

- ❖ The current landowner constructed the low wooden deck and enclosed the balcony above the garage without submitting any building plans.
- ❖ The penalty fee imposed is considered to be reasonable with due regard of the limited scale of the encroachment.

RESPONSIBLE OFFICIAL :**H OLIVIER**

4.2**PORTION 104 (A PORTION OF PORTION 102) OF THE FARM HEMEL EN AARDE NO 587, DIVISION CALEDON, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR CONSENT USE: PLAN ACTIVE TOWN AND REGIONAL PLANNING ON BEHALF OF HASPESLAGH VINEYARDS (PTY) LTD****RCAL 587/104 (4250/2022)****H Olivier****(028) 313 8900****Hermanus Administration****23 June 2023**

EXECUTIVE SUMMARY

An application was received on 21 September 2022 from Plan Active Town & Regional Planning on behalf of Haspeslagh Vineyards (Pty) Ltd on Portion 104 (a portion of Portion 102) of the Farm Hemel en Aarde No. 587 for the following:

- ❖ **consent use** in terms of Section 16(2)(o) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 to allow tourist accommodation comprising four (4) eco cabins, and
- ❖ the **consent of the District Roads Engineer** concerning restrictive title deed conditions imposed in terms of the Advertising on Roads and Ribbon Development Act, Act 21 of 1940.

RESOLVED:

1. that the application in terms of Section 16(2)(o) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Portion 104 (a portion of Portion 102) of the Farm Hemel en Aarde No. 587 for a consent use to allow tourist accommodation comprising four (4) eco cabins, **be approved** in terms of the provisions of Section 61 of the By-Law, subject to the following conditions:
 - (a) that the Site Development Plan (No. 2119-100 Rev 2) be amended and that the non-interleading bedrooms of the two larger cabins (cabin 1 and 4) be made interleading with the cabins;
 - (b) that the tourist accommodation be limited to four (4) eco-cabins;
 - (c) that building plans be submitted to the Building Control Department of the Municipality in accordance with the amended Site Development Plan, and that any requirements by the Fire and Building Departments at that stage be complied with;

- (d) that, in terms of the “Noise Control Regulations” promulgated under the Environmental Conservation Act, 1989 (Act 73 of 1989), the music volumes emanating from the premises at all times be controlled in such a manner that it adds less than 7dB(A) to ambient noise;
 - (e) that the owner/farm manager must reside on the property;
 - (f) that adequate provision be made to manage the behaviour of patrons;
 - (g) that commercial rates and taxes, as determined by the annual budget, be made applicable, which tariffs are automatically adjusted in terms of the annual budget;
 - (h) that the site must have a dedicated waste storage area as per part of the National Building Regulations (SANS 10400), and all refuse must then be removed from the property to a registered disposal site;
 - (i) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation;
 - (j) that there be compliance with all relevant Health and Fire Regulations;
 - (k) that all the conditions imposed by Telkom be complied with;
 - (l) that the conditions of Western Cape Department of Agriculture be complied with;
 - (m) that all the conditions of BGCMA be complied with;
 - (n) that all the conditions imposed by Eskom be complied with;
 - (o) that the conditions in the EIA Environmental Authorisation be complied with; and
 - (p) that all the conditions in the Services Report be complied with.
2. that the applicant and objector be notified of his/her right of appeal in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 with regard to the above conditions of approval.

REASONS FOR THE RESOLUTION:

- ❖ The application has followed due procedure.
- ❖ None of the internal departments objected to the application.
- ❖ The property owner will provide water and electricity, and the municipality will service the conservancy sewerage tank.

- ❖ No objections were received from surrounding landowners.
- ❖ An EIA Environmental Authorisation was obtained from the Western Cape Department of EA&DP (Environmental) and Cape Nature supports the application. It is, therefore, the opinion that the proposal will not have a negative impact on the natural environment.
- ❖ Both the National and Western Cape Departments of Agriculture support the proposal, and it is interpreted that the proposal will not have a negative impact on agricultural productivity.
- ❖ The Western Cape Department of EA&DP (Planning) did not object to the proposed development of tourist facilities on the property, but recommended that only three (3) units be approved, as per the recommendations in the Western Cape Land Use Planning Guidelines for Rural Areas (2019). The Land Use Scheme, however, makes provision to accommodate tourist accommodation for transient guests and similar applications have been approved in recent years that do not comply with the Rural Guideline recommendations.
- ❖ The proposal is in line with the SPLUMA principles and utilises the land resource to its full potential in a sustainable manner without impacting on the natural environment or valuable agricultural land.
- ❖ The proposal is consistent with surrounding developments, which include wine estates with tourist accommodation and facilities.
- ❖ The application will not have a negative impact on the character of the area.

RESPONSIBLE OFFICIAL :

H OLIVIER

4.3

REFERRAL: ERF 5473, 13 17TH AVENUE, VOËLKLIIP, HERMANUS, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITION, REZONING, CONSENT USE AND DEPARTURE: MESSRS WRAP PROJECT OFFICE ON BEHALF OF DE BROEDER INVESTMENTS (PTY) LTD

5473 HVK

File Ref: 4088/2022

P Roux

(028) 313 8900

Hermanus Administration

17 July 2023

EXECUTIVE SUMMARY

An application was received on 14 March 2021 from Messrs WRAP Project Office on behalf of De Broeder Investments (PTY) Ltd in terms of the Overstrand Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) applicable to Erf 5473, Hermanus, for the following:

- ❖ **removal of restrictive title deed condition** in terms of Section 16.(2)(f) of the By-Law in order to remove restrictive Condition III.D.(c) contained in Title Deed T9341/2014;
- ❖ **rezoning** in terms of Section 16.(2)(a) of the By-Law in order to rezone the property from Residential Zone 1: Single Residential to Business Zone 3: Local Business to allow business related uses on the property (offices);
- ❖ **consent use** in terms of Section 16.(2)(o) to accommodate a flatlet on the ground floor of a business premises, and
- ❖ **departure** in terms of Section 16.(2)(b) to relax the western building line from 3m to 2,68m to accommodate the proposed offices and the southern building line from 3m to 2,48m to accommodate the proposed flat.

The proposal was considered by the Municipal Planning Tribunal (MPT) on 27 February 2023, and it was resolved as follows:

- “1. *that the comments/objections received be noted;*
2. *that the application in terms of Section 16.(2)(f) of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 (By-Law) applicable to Erf 5473, Hermanus for removal of Condition III.D(c) of Title Deed T9341/2014, to accommodate offices and a professional practice, **not be approved**, in terms of the provisions of Section 61 of the By-Law;*
3. *that the applications in terms of the By-Law applicable to Erf 5473, Hermanus, for the following*

- ❖ **rezoning** in terms of Section 16.(2)(a) of the By-Law in order to rezone the property from Residential Zone 1: Single Residential to Business Zone 3: Local Business to allow business related uses on the property (offices);
- ❖ **consent use** in terms of Section 16.(2)(o) to accommodate a flatlet on the ground floor of a business premises, and
- ❖ **departure** in terms of Section 16.(2)(b) to relax the western building line from 3m to 2,68m to accommodate the proposed offices and the southern building line from 3m to 2,48m to accommodate the proposed flat.

not be approved in terms of the provisions of Section 61 of the By-Law;

4. *that the applicant and persons who commented be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 with regard to the above conditions of approval.”*

Reasons for the above decision are as follows:

- The proposed use is in stark contrast to the residential character of the area.
- The Overstrand Growth Management Strategy, 2010 clearly indicated an area in Voëlklip which is earmarked for Economic Opportunity (local). This area is central in Voëlklip and ideally located for commercial/business activities to cluster. Therefore, the Municipality's view is to centralise and cluster business activities together and not allow for the dispersion of business activities throughout the residential suburb or along the R43 (Seventh Street). A precedent will be created of ad hoc commercial erven which will lead to the fragmentation of the residential suburb and line development along the R43 (Seventh Street).
- The motivation does not address the deviation of the Overstrand Municipal Spatial Development Framework, 2020 or of the Overstrand Growth Management Strategy, 2010.
- The objections received are noted and the concern that the proposed use will change the character of the area is agreed with. It should be noted that the land use application is not clear whether it is specifically a rezoning for a doctor's office and it seems like the rezoning is to allow for any type of professional. Thus, the fact that the property was used as a physiotherapy centre in the past is not relevant as attorneys, vets, or architects can utilise the property for their use and in different ways. Each type of professional practice has its own operational methods which could negatively impact the surrounding area.

Notice of the decision was sent to the applicant on 7 March 2023 and one letter of appeal was received against the decision of the MPT. The appeal was received from Messrs WRAP Project Office on behalf of De Broeder Investments (PTY) Ltd. The appeal was submitted on 27 March 2023 within the prescribed 21 days from the date of notification of the decision and the relevant appeal fee was paid. The appeal is thus regarded as being valid.

The Appeal was referred to the Appeal Authority on 21 June 2023. On 5 July 2023 the Appeal Authority referred the appeal back to the MPT. The reason for the referral was to “*request advice and reconsideration of the application, in that the MPT suggests restrictive conditions to the type of business to be accommodated on Erf 5473 which will have the least potential of negative impact on the ambiance of Voëlklip*”.

RESOLVED:

1. that it be noted that the MPT is a decision-making body and not an advisory body and should the Appeal Authority require advice, she may legally appoint a technical advisor to assist her; and
2. that the request be referred back to the Appeal Authority who must make a definitive and final decision to either confirm, vary or revoke the decision of the MPT and furnish reasons therefor.

RESPONSIBLE OFFICIAL :**P ROUX****The meeting adjourned at 11:20**